

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION

2:09-cv-04414-SDW-MCA

MDL-2158

This Order Relates To All Cases

CASE MANAGEMENT ORDER
REGARDING INITIAL TRIAL SETTING
AND PRETRIAL DEADLINES

WHEREAS, Defendants' Liaison Counsel and Plaintiffs' Liaison Counsel (together, the "Parties") recognize that there is a need to streamline the pretrial discovery process to eliminate redundancy, promote efficiency, and coordinate pretrial discovery, briefing, and scheduling with all Durom Cup actions, including those pending in state courts ("State Court Actions").

WHEREAS, the Parties have agreed to the following terms relating to the completion of common issue discovery in cases that may be eligible for initial trial settings in the MDL and/or their home venue (*i.e.*, the transferor court).

IT IS HEREBY STIPULATED by and between the Parties:

I. Case Selection Process and Initial Discovery on Trial Candidate Case Picks

A. No later than **March 7, 2014**, the Parties shall each select up to ~~three~~ ^{four} (3) Durom Cup cases in which the plaintiff had a revision of his/her Durom Cup as candidates for initial trials ("Initial Trial Candidate Case Picks"). The Initial Trial Candidate Case Picks shall be exchanged in writing with opposing counsel. No cases involving bilateral revisions shall be selected as Initial Trial Candidate Case Picks.

B. Only cases in which a Plaintiff Fact Sheet has been served by ~~December 15,~~ ^{has been responded to by} ~~2013,~~ ^{June 15,} are eligible as possible Initial Trial Candidate Case Picks. ₂₀₁₄

C. Plaintiff's Fact Sheet and all authorizations required by the Third Scheduling Order by ~~December 15, 2013~~ *Jan 5, 2014*.

D. The Parties shall have until **May 30, 2014**, to conduct the following discovery of the Initial Trial Candidate Case Picks¹:

1. The deposition of the Plaintiff(s);
2. The deposition of the implanting surgeon; and
3. The deposition of the explanting surgeon.

E. Once the Parties designate cases pursuant to this Section I, Plaintiffs may not dismiss any Initial Trial Candidate Case Pick except with prejudice. If Plaintiffs dismiss any of Defendants' Initial Trial Candidate Cases, each deadline set forth herein, including the initial trial date and/or date of remand to the transferor court will be automatically extended by a period of forty-five (45) days from the date the Court enters the order dismissing the Plaintiff(s). During that time, a replacement Initial Trial Candidate Case Pick shall be selected.

II. Common Issue Discovery and Dispositive Motions Deadlines

A. The Parties shall have until **May 30, 2014**, to complete all common issue fact discovery for all MDL cases.

B. Pursuant to Fed.R.Civ.P. 26(a)(2)(A) and (B), Plaintiffs shall disclose experts who will testify on common issues of (i) design and engineering, (ii) epidemiology, and/or (iii) regulatory issues ("Common Issue Experts") by **May 15, 2014**. Proposed dates for the depositions of Plaintiffs' Common Issue Experts shall be provided with the expert designations.

C. Pursuant to Fed.R.Civ.P. 26(a)(2)(A) and (B), Defendants shall disclose Common Issue Experts by **August 15, 2014**. Proposed dates for the depositions of Defendants' Common Issue Experts shall be provided with the expert designations.

¹ This does not foreclose additional case-specific fact discovery on all other plaintiffs.

D. The Parties will have until **September 15, 2014**, to complete all Common Issue Expert discovery for all MDL cases.

E. All motions to exclude or limit common issue expert evidence and all dispositive motions related to issues that are common to all MDL cases shall be filed no later than **September 15, 2014**.

III. Initial Trial Selections

A. By **June 13, 2014**, the Parties shall file submissions as to the order in which the six (6) Initial Trial Candidate Case Pick cases should be tried and/or remanded to the transferor courts. The Parties are directed to explain the case facts and characteristics supporting the proposed order in which the cases should be tried and/or remanded. The Court encourages the parties to agree regarding the order of the trial settings and/or remand.

B. No later than **June 30, 2014**, the Court will select the order in which the Initial Trial Candidate Case Pick cases will be tried and/or remanded and designate the first two cases to be tried and/or remanded (the "First Two Trial Case Picks").

III. First Two Trial Case Pick Deadlines

A. Upon the Court's selection of the First Two Trial Case Picks, each side must preliminarily designate its fact witnesses for the First Two Trial Case Picks within thirty (30) days.

B. Pursuant to Fed.R.Civ.P. 26(a)(2)(A) and (B), Plaintiffs shall disclose experts who will testify as to case specific issues and any other issues not set forth in paragraph II ("Non-Common Issue Experts") for the First Two Trial Case Picks by **July 14, 2014**. Proposed dates for the depositions of Plaintiffs' Non-Common Issue Experts shall be provided with the expert designations.

C. Pursuant to Fed.R.Civ.P. 26(a)(2)(A) and (B), Defendants shall disclose Non-Common Issue Experts for the First Two Trial Case Picks by **September 19, 2014**. Proposed dates for the depositions of all Defendants' Non-Common Issue Experts shall be provided with the expert designations.

D. The Parties shall have until **October 24, 2014**, to complete all case specific expert discovery as to the First Two Trial Case Picks.

E. The Parties shall have until **October 24, 2014**, to complete all case specific discovery as to the First Two Trial Case Picks.

F. All motions to exclude or limit Non-Common Issue Experts and all dispositive motions in the First Two Trial Case Picks shall be filed no later than **November 25, 2014**.

G. All other pre-trial deadlines for the First Two Trial Case Picks and the other Initial Trial Candidate Case Picks will be set in a future order.

IV. Trial Pick Process and Trial Date

A. The Parties shall meet and confer to determine the appropriate venue for trials of the Initial Trial Candidate Case Picks.

B. The first of the First Two Trial Case Picks Case shall be set for trial in the District of New Jersey and/or remand for trial in **March 2015**. The second case shall tentatively be scheduled for trial and/or remand in **May 2015**.

SO ORDERED:

Dated: NW 14-2013.


MADELINE COX ARLEO, U.S.M.J.

A tel status conf is scheduled for Jan. 16 at noon. Parties shall submit a joint status letter in advance.